

MANDATE

12-3866-cr
United States v. White

N.Y.S.D. Case #
10-cr-0516(SHS)

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

SUMMARY ORDER

RULINGS BY SUMMARY ORDER DO NOT HAVE PRECEDENTIAL EFFECT. CITATION TO A SUMMARY ORDER FILED ON OR AFTER JANUARY 1, 2007, IS PERMITTED AND IS GOVERNED BY FEDERAL RULE OF APPELLATE PROCEDURE 32.1 AND THIS COURT'S LOCAL RULE 32.1.1. WHEN CITING A SUMMARY ORDER IN A DOCUMENT FILED WITH THIS COURT, A PARTY MUST CITE EITHER THE FEDERAL APPENDIX OR AN ELECTRONIC DATABASE (WITH THE NOTATION "SUMMARY ORDER"). A PARTY CITING A SUMMARY ORDER MUST SERVE A COPY OF IT ON ANY PARTY NOT REPRESENTED BY COUNSEL.

At a stated term of the United States Court of Appeals for the Second Circuit, held at the Thurgood Marshall United States Courthouse, 40 Foley Square, in the City of New York, on the 23rd day of August, two thousand thirteen.

PRESENT: PIERRE N. LEVAL,
RICHARD C. WESLEY,
PETER W. HALL,
Circuit Judges.

USDC SDNY
DOCUMENT
ELECTRONICALLY FILED
DOC #:
DATE FILED: September 17, 2013

UNITED STATES OF AMERICA,

Appellee,

-v.-

No. 12-3866-cr

JOHN RAYMOND ANTHONY WHITE,

Defendant-Appellant.

FOR APPELLEE: ALVIN BRAGG, JR., Assistant United States Attorney (Brent S. Wible, Assistant United States Attorney, *on the brief*), for Preet Bharara, United States Attorney for the Southern District of New York.

FOR APPELLANT: LAWRENCE RUGGIERO, New York, NY.

MANDATE ISSUED ON 09/17/2013

1 Appeal from the United States District Court for the
2 Southern District of New York (Stein, J.).
3

4 **UPON DUE CONSIDERATION, IT IS HEREBY ORDERED, ADJUDGED**
5 **AND DECREED** that the judgment is **AFFIRMED**.

6 Defendant-appellant John White appeals from a September
7 20, 2012 judgment of conviction entered by the United States
8 District Court for the Southern District of New York (Stein,
9 J.) following a jury trial. We assume the parties'
10 familiarity with the facts and procedural history of the
11 case.

12 White was convicted on five counts associated with
13 making false statements in connection with applications for
14 government contracts set aside for veterans and one count of
15 witness tampering. He argues primarily that the district
16 court's admission of certain evidence was improper under
17 Federal Rules of Evidence 403 and 404(b). "We review
18 evidentiary rulings for abuse of discretion." *United States*
19 *v. Mercado*, 573 F.3d 138, 141 (2d Cir. 2009). "To find such
20 abuse, we must conclude that the trial judge's evidentiary
21 rulings were arbitrary and irrational." *Id.* (internal
22 quotation marks omitted). Evidence of a crime, wrong, or
23 other act is not admissible to prove a person's character in
24 order to show that on a particular occasion the person acted

1 in accordance with the character. Fed. R. Evid. 404(b)(1).
2 Such evidence may, however, be admitted for other purposes,
3 such as proving intent or knowledge. Fed. R. Evid.
4 404(b)(2); *see also* *Mercado*, 573 F.3d at 141.

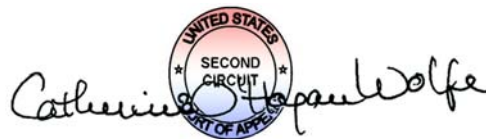
5 After careful review, we conclude that the disputed
6 evidence was properly admitted. Although White had
7 stipulated that he was not a veteran, he did not stipulate
8 as to his knowledge or intent in making the statements
9 associated with the contracts or contract applications that
10 formed the basis for the indictment. The district court did
11 not abuse its discretion in determining that statements by
12 White in other contexts regarding his supposed veteran
13 status were relevant to the issues of knowledge and intent,
14 particularly where the evidence was admitted with limiting
15 instructions to the jury.

16 White also asserts that various statements made by the
17 Government in summation were improper. Particularly where,
18 as here, no contemporaneous objection was made to statements
19 in summation, we remand for a new trial only where such
20 statements "amount to flagrant abuse" which "seriously
21 affects the fairness, integrity, or public reputation of
22 judicial proceedings." *United States v. Carr*, 424 F.3d 213,

227 (2d Cir. 2005) (internal quotation marks omitted). We see no such abuse here. Indeed, White does not identify any specific remark by the Government that ostensibly meets this standard. Instead, his arguments regarding summation amount to a generalized attack on the Government's case, and on the fact that the summation included references to the evidence he contends was improperly admitted in the first place. We find no misconduct in the prosecution's summation.

We have considered all of White's arguments and find them to be without merit. For the reasons stated above, the judgment of the district court is **AFFIRMED**.

FOR THE COURT:
Catherine O'Hagan Wolfe, Clerk

A circular official seal of the United States Court of Appeals, Second Circuit, is stamped over the signature. The seal contains the text "UNITED STATES", "SECOND CIRCUIT", and "COURT OF APPEALS" around a central emblem.

A True Copy

Catherine O'Hagan Wolfe, Clerk

United States Court of Appeals, Second Circuit

A circular official seal of the United States Court of Appeals, Second Circuit, is stamped over the signature. The seal contains the text "UNITED STATES", "SECOND CIRCUIT", and "COURT OF APPEALS" around a central emblem.